

67



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,668	07/02/2003	Gunter Holzner	81455-5560	7260
28765	7590	09/21/2005	EXAMINER	
WINSTON & STRAWN LLP 1700 K STREET, N.W. WASHINGTON, DC 20006			LAMM, MARINA	
			ART UNIT	PAPER NUMBER

1616

DATE MAILED: 09/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/613,668

Applicant(s)

HOLZNER ET AL

Examiner

Marina Lamm

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 10-14, 23 and 24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 10-14, 23 and 24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/31/05 has been entered.

2. Claims pending are 1-7, 10-14, 23 and 24. Claims 1, 2 and 4 have been amended. Claims 8, 9, 15-22 and 25 have been cancelled.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 2, 10 and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 2, 10 and 24 are viewed as indefinite because they recite the limitation "chlorinated hydrocarbons." The term "chlorinated hydrocarbons" presents uncertainty with respect to the question of scope of the claims because it is unclear what particular compounds are encompassed by the instant claims. It is well known that some chlorinated hydrocarbons (e.g. DDT) are highly toxic for humans.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-6, 11, 13, 23 and 24 are rejected under 35 U.S.C. 102(e) as being anticipated by Murphy et al. (US 6,555,098), of record.

Murphy et al. teach deodorant products containing sodium bicarbonate and 0.1-20% of a fragrance ingredient encapsulated into a water-soluble or water-insoluble polymer. See col. 2, lines 16-44; col. 3, lines 34-39; col. 4, lines 4-9. When a water-insoluble polymer is used for the encapsulation, a surface coating of the polymer preferably contains 5-30% of a particulate filler, such as sodium carbonate. See col. 3, lines 39-47. The polymer-encapsulated particles of Murphy et al. are preferably spray-dried. See col. 2, lines 60-65. With respect to Claims 23 and 24, the reference teaches the claimed method step, i.e. adding a fireproof agent such as sodium carbonate to the microcapsule containing a perfuming ingredient.

Thus, Murphy et al. teach each and every limitation of Claims 1-6, 11, 13, 23 and 24.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 7, 10, 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murphy et al. (US 6,555,098).

Murphy et al. applied as above. The reference does not explicitly teach the claimed step of adding the fireproofing agent (here, sodium carbonate) to an aqueous emulsion of the perfuming ingredient in the carrier polymeric material. However, Murphy et al. teach incorporating a particulate filler, such as sodium carbonate into a water-insoluble polymer coating as discussed above. It would have been obvious to one having ordinary skill in the art at the time the claimed invention was made to add the particulate filler (sodium carbonate) to the aqueous emulsion of the perfuming ingredient/sodium bicarbonate in the carrier water-insoluble polymeric material with a reasonable expectation of incorporating sodium carbonate into the water-insoluble polymer coating in order to achieve the desired effect of release of the core materials from the capsules.

Response to Arguments

9. Applicant's arguments with respect to claims 1-7, 10-14, 23 and 24 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 4,597,959; US 5,098,725; US 6,197,349; US 6,531,155; WO 91/17821; EP 1064856.

11. No claim is allowed at this time.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (571) 272-0618. The examiner can normally be reached on Mon-Fri from 11am to 7pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz, can be reached at (571) 272-0887.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ml
9/17/05


SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER